

HOLLAND & KNIGHT LLP
Sarah A. Marsey, Bar No. 297911
Alex Haddock, Bar No. 312962
50 California Street, Suite 2800
San Francisco, CA 94111
Telephone: +1.415.743.6900
Facsimile: +1.415.743.6910
E-mail: sarah.marsey@hklaw.com
alex.haddock@hklaw.com

Attorneys for Plaintiff

MORGAN, LEWIS & BOCKIUS LLP
Debra L. Fischer, Bar No. 142516
Seth M. Gerber, Bar No. 202813
2049 Century Park East, Suite 700
Los Angeles, California 90067
Phone: +1.310.907.1000
Fax: +1.310.907.1001
debra.fischer@morganlewis.com
seth.gerber@morganlewis.com

MORGAN, LEWIS & BOCKIUS LLP
Robert A. Lewis, Bar No. 83630
One Market, Spear Street Tower
San Francisco, CA 94105
Phone: +1.415.442.1353
Fax: +1.415.442.1001
robert.lewis@morganlewis.com

Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ARTHUR J. GALLAGHER & CO., a
Delaware Corporation,

Plaintiff,

vs.

DON TARANTINO, an individual,
BERNADETTE HEATER, an individual,
MICHAEL MACHETTE, an individual, and
SPENCER BRUSH, an individual,

Defendants.

CASE NO.: 20-cv-05505-EMC

STIPULATED PROTECTIVE ORDER

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Order does not confer blanket protections on all
7 disclosures or responses to discovery and that the protection it affords from public disclosure and
8 use extends only to the limited information or items that are entitled to confidential treatment under
9 the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below,
10 that this Stipulated Protective Order does not entitle them to file confidential information under
11 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that
12 will be applied when a party seeks permission from the court to file material under seal.

13 2. DEFINITIONS

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of
18 Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
20 as their support staff).

21 2.4 Designated House Counsel: House Counsel who seek access to “HIGHLY
22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

23 2.5 Designating Party: a Party or Non-Party that designates information or items that it
24 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

26 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
27 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
28

1 transcripts, and tangible things), that are produced or generated in disclosures or responses to
2 discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
4 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a
5 consultant in this action, (2) is not a past or current employee of a Party or of a Party's competitor,
6 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's
7 competitor.

8 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
9 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
10 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less
11 restrictive means.

12 2.9 House Counsel: attorneys who are employees of a party to this action. House
13 Counsel does not include Outside Counsel of Record or any other outside counsel.

14 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
15 entity not named as a Party to this action.

16 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action
17 but are retained to represent or advise a party to this action and have appeared in this action on
18 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

19 2.12 Party: any party to this action, including all of its officers, directors, employees,
20 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

21 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
22 Material in this action.

23 2.14 Professional Vendors: persons or entities that provide litigation support services
24 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
25 storing, or retrieving data in any form or medium) and their employees and subcontractors.

26 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
27 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."
28

1 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
2 Producing Party.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only Protected Material
5 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all
6 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
7 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
8 However, the protections conferred by this Stipulation and Order do not cover the following
9 information: (a) any information that is in the public domain at the time of disclosure to a Receiving
10 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of
11 publication not involving a violation of this Order, including becoming part of the public record
12 through trial or otherwise; and (b) any information known to the Receiving Party prior to the
13 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the
14 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of
15 Protected Material at trial shall be governed by a separate agreement or order.

16 4. DURATION

17 Even after final disposition of this litigation, the confidentiality obligations imposed by this
18 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
19 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
20 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
21 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the
22 time limits for filing any motions or applications for extension of time pursuant to applicable law.

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
25 Non-Party that designates information or items for protection under this Order must take care to
26 limit any such designation to specific material that qualifies under the appropriate standards.

27 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
28 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily

1 encumber or retard the case development process or to impose unnecessary expenses and burdens
 2 on other parties) expose the Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it designated for
 4 protection do not qualify for protection at all or do not qualify for the level of protection initially
 5 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the
 6 mistaken designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 8 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
 9 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
 10 designated before the material is disclosed or produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic documents, but
 13 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
 14 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 15 ONLY" to each page that contains protected material.

16 A Party or Non-Party that makes original documents or materials available for inspection
 17 need not designate them for protection until after the inspecting Party has indicated which material
 18 it would like copied and produced. During the inspection and before the designation, all of the
 19 material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
 20 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
 21 copied and produced, the Producing Party must determine which documents, or portions thereof,
 22 qualify for protection under this Order. Then, before producing the specified documents, the
 23 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
 24 CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that contains Protected Material.
 25 If only a portion or portions of the material on a page qualifies for protection, the Producing Party
 26 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
 27 margins) and must specify, for each portion, the level of protection being asserted.

1 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
 2 Designating Party identify on the record, before the close of the deposition, hearing, or other
 3 proceeding, all protected testimony and specify the level of protection being asserted. When it is
 4 impractical to identify separately each portion of testimony that is entitled to protection, the
 5 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding is
 6 concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
 7 which protection is sought and specify the level of protection being asserted, which protection will
 8 apply to the testimony for 21 days or until the identification is made within the 21 days.. Only those
 9 portions of the testimony that are appropriately designated for protection within the 21 days shall be
 10 covered by the provisions of this Stipulated Protective Order.

11 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
 12 other proceeding to include Protected Material so that the other parties can ensure that only
 13 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
 14 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
 15 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 16 ATTORNEYS’ EYES ONLY.”

17 Transcripts containing Protected Material shall have an obvious legend on the title page that
 18 the transcript contains Protected Material, and the title page shall be followed by a list of all pages
 19 (including line numbers as appropriate) that have been designated as Protected Material and the
 20 level of protection being asserted by the Designating Party. The Designating Party shall inform the
 21 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-
 22 day period for designation shall be treated during that period as if it had been designated at the level
 23 of protection asserted by the Designating Party in its entirety unless otherwise agreed. After the
 24 expiration of that period, the transcript shall be treated only as actually designated.

25 (c) for information produced in some form other than documentary and for any other
 26 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
 27 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
 28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

1 5.3 Inadvertent Failures to Designate. If timely corrected upon discovery, an inadvertent
 2 failure to designate qualified information or items does not, standing alone, waive the Designating
 3 Party's right to secure protection under this Order for such material. Upon timely correction of a
 4 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
 5 in accordance with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
 9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 12 original designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
 14 by providing written notice of each designation it is challenging and describing the basis for each
 15 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
 16 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
 17 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must
 18 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
 19 are not sufficient) within 5 days of the date of service of notice. In conferring, the Challenging Party
 20 must explain the basis for its belief that the confidentiality designation was not proper and must
 21 give the Designating Party an opportunity to review the designated material, to reconsider the
 22 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
 23 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
 24 has engaged in this meet and confer process first or establishes that the Designating Party is
 25 unwilling to participate in the meet and confer process in a timely manner.

26 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
 27 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
 28 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the

1 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
 2 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
 3 competent declaration affirming that the movant has complied with the meet and confer
 4 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
 5 motion including the required declaration within 21 days (or 14 days, if applicable) shall
 6 automatically waive the confidentiality designation for each challenged designation. In addition, the
 7 Challenging Party may file a motion challenging a confidentiality designation at any time if there is
 8 good cause for doing so, including a challenge to the designation of a deposition transcript or any
 9 portions thereof. Any motion brought pursuant to this provision must be accompanied by a
 10 competent declaration affirming that the movant has complied with the meet and confer
 11 requirements imposed by the preceding paragraph.

12 The burden of persuasion in any such challenge proceeding shall be on the Designating
 13 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
 14 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
 15 Unless the Designating Party has waived the confidentiality designation by failing to file a motion
 16 to retain confidentiality as described above, all parties shall continue to afford the material in
 17 question the level of protection to which it is entitled under the Producing Party's designation until
 18 the court rules on the challenge.

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 21 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 22 defending, or attempting to settle this litigation.

23 Such Protected Material may be disclosed only to the categories of persons and under the
 24 conditions described in this Order. When the litigation has been terminated, a Receiving Party must
 25 comply with the provisions of section 15 below (FINAL DISPOSITION).

26 Protected Material must be stored and maintained by a Receiving Party at a location and in a
 27 secure manner that ensures that access is limited to the persons authorized under this Order.
 28

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
 2 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 3 information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
 5 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for
 6 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
 7 attached hereto as Exhibit A;

8 (b) Defendants (who are individuals), and the following in-house counsel of non-party
 9 Alliant Insurance Services, Inc., which is currently providing a defense to the Defendants in this
 10 case subject to qualifications, may view Confidential Materials and Highly Confidential Materials if
 11 necessary for the defense of this action: Jennifer E. Baumann (hereinafter “Identified Alliant
 12 Counsel”), provided that she confirms that she will be subject to the jurisdiction of this court and
 13 abide by all the provisions of this Protective Order as if she were a party;;

14 (c) the officers, directors, and employees (including House Counsel) of the Receiving
 15 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
 16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
 18 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement
 19 to Be Bound” (Exhibit A);

20 (e) the court and its personnel;

21 (f) court reporters and their staff, professional jury or trial consultants, and Professional
 22 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
 23 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (g) during their depositions, witnesses in the action to whom disclosure is reasonably
 25 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
 26 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
 27 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
 28

bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

(b)) Designated House Counsel of the Receiving Party who (1) has no involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

(c) Identified Alliant Counsel who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been followed;

(e) the court and its personnel;

(f) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

1 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
 2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated House
 3 Counsel or Experts.

4 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating
 5 Party, a Party that seeks to disclose to Designated House Counsel any information or item that has
 6 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
 7 paragraph 7.3(b) first must make a written request to the Designating Party that (1) sets forth the
 8 full name of the Designated House Counsel and the city and state of his or her residence, and (2)
 9 describes the Designated House Counsel’s current and reasonably foreseeable future primary job
 10 duties and responsibilities in sufficient detail to determine if House Counsel is involved, or may
 11 become involved, in any competitive decision-making.

12 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating
 13 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item
 14 that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to
 15 paragraph 7.3(c) first must make a written request to the Designating Party that (1) sets forth the
 16 full name of the Expert and the city and state of his or her primary residence, (2) attaches a copy of
 17 the Expert’s current resume, (3) identifies the Expert’s current employer(s), (4) identifies each
 18 person or entity from whom the Expert has received compensation or funding for work in his or her
 19 areas of expertise or to whom the expert has provided professional services, including in connection
 20 with a litigation, at any time during the preceding five years, and (5) identifies (by name and
 21 number of the case, filing date, and location of court) any litigation in connection with which the
 22 Expert has offered expert testimony, including through a declaration, report, or testimony at a
 23 deposition or trial, during the preceding five years.

24 (b) A Party that makes a request and provides the information specified in the preceding
 25 respective paragraphs may disclose the subject Protected Material to the identified Designated
 26 House Counsel or Expert unless, within 5 days of delivering the request, the Party receives a written
 27 objection from the Designating Party. Any such objection must set forth in detail the grounds on
 28 which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the Party seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.

In any such proceeding, the Party opposing disclosure to Designated House Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Designated House Counsel or Expert.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

1 If the Designating Party timely seeks a protective order, the Party served with the subpoena
 2 or court order shall not produce any information designated in this action as “CONFIDENTIAL” or
 3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court
 4 from which the subpoena or order issued, unless the Party has obtained the Designating Party’s
 5 permission. The Designating Party shall bear the burden and expense of seeking protection in that
 6 court of its confidential material – and nothing in these provisions should be construed as
 7 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
 8 another court.

9 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
 10 THIS LITIGATION

11 (a) The terms of this Order are applicable to information produced by a Non-Party in
 12 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
 13 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with this
 14 litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions
 15 should be construed as prohibiting a Non-Party from seeking additional protections.

16 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
 17 Party’s confidential information in its possession, and the Party is subject to an agreement with the
 18 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

19 1. promptly notify in writing the Requesting Party and the Non-Party that some or all
 20 of the information requested is subject to a confidentiality agreement with a Non-Party;

21 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in
 22 this litigation, the relevant discovery request(s), and a reasonably specific description of the
 23 information requested; and

24 3. make the information requested available for inspection by the Non-Party.

25 (c) If the Non-Party fails to object or seek a protective order from this court within 14
 26 days of receiving the notice and accompanying information, the Receiving Party may produce the
 27 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely
 28 seeks a protective order, the Receiving Party shall not produce any information in its possession or

control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Pursuant to Federal Rule of Evidence 502(d) and (e) disclosure of privileged material does not waive any privilege or other protection attached thereto. In the event that such material is disclosed inadvertently or otherwise, any party (or non-parties, to the extent applicable) may thereafter reasonably assert a claim of privilege or other protection. Thereafter, the Receiving Party must promptly return the original information and all copies of the same to the Producing Party, or destroy the original information and all copies, and make no use of such information. The Receiving Party shall ensure that any summary, abstract, compilation, analyses, memorandum, translations, excerpts, or notes which were generated based upon such information shall be immediately treated in conformance with such designation. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d).

12. NO ADMISSION; NO PREJUDICE

Entering into this Stipulated Protective Order, producing or receiving confidential or attorneys’ eyes only material, producing or receiving materials not designated confidential or

attorneys' eyes only, or otherwise complying with the terms of this Stipulated Protective Order, shall not:

(a) prejudice in any way the rights of any party (or participating non-party, to the extent applicable) to (i) seek production of documents or information it considers subject to discovery, or (ii) object to the production of documents or information it considers not subject to discovery;

(b) operate as an admission by any party (or participating non-party, to the extent applicable) that any particular material, whether or not designated as confidential or attorneys' eyes only, does or does not contain or reflect trade secrets or any other type of confidential or proprietary information under the law;

(c) prejudice in any way the rights of any party (or participating non-party, to the extent applicable) to petition the Court for a further protective order in this action;

(d) prejudice in any way the rights of any party to object to the relevance, authenticity, use, or admissibility into evidence of any document, testimony, or other evidence subject to this Stipulated Protective Order;

(e) preclude any party (or participating non-party, to the extent applicable) from objecting to discovery that it believes to be otherwise improper; or

(f) operate as a waiver of any attorney-client, work product, business strategy, trade secret, or other privilege or protection.

13. TRIAL EXHIBITS

Any documents labeled "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to this Stipulated Protective Order shall have the label removed before such documents are shown to a jury as trial exhibits or submitted into evidence during trial. The purpose of removing the designation label shall be so as to not prejudice the finder of fact with the stamped designation label; provided, however, the designated document shall maintain its corresponding designation despite removal of the designation label until the document is shown to a jury or submitted into evidence, at which time it shall be treated as agreed by the parties or determined by the Court during the pre-trial conference or at any other time the Court deems appropriate. The parties further agree they will confer in advance of the pretrial conference

1 regarding the handling of trial exhibits that are designated under this order as “CONFIDENTIAL”
 2 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and attempt in good faith to
 3 reach an agreement concerning the handling of such exhibits at trial. In the event the parties are
 4 unable to reach an agreement, they will present the issues to the Court at or before the pretrial
 5 conference.

6 14. MISCELLANEOUS

7 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
 8 seek its modification by the court in the future.

9 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
 10 no Party waives any right it otherwise would have to object to disclosing or producing any
 11 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
 12 Party waives any right to object on any ground to use in evidence of any of the material covered by
 13 this Protective Order.

14 14.3 Filing Protected Material. Without written permission from the Designating Party or
 15 a court order secured after appropriate notice to all interested persons, a Party may not file in the
 16 public record in this action any Protected Material. A Party that seeks to file under seal any
 17 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
 18 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
 19 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
 20 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
 21 to protection under the law. If a Receiving Party's request to file Protected Material under seal
 22 pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the
 23 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise
 24 instructed by the court.

25 15. FINAL DISPOSITION

26 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
 27 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
 28 As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations,

1 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
 2 the Protected Material is returned or destroyed, the Receiving Party must submit a written
 3 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
 4 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material
 5 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
 6 abstracts, compilations, summaries or any other format reproducing or capturing any of the
 7 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy
 8 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
 9 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
 10 and expert work product, even if such materials contain Protected Material. Any such archival
 11 copies that contain or constitute Protected Material remain subject to this Protective Order as set
 12 forth in Section 4 (DURATION).

13 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

14 Dated: July 9, 2021

HOLLAND & KNIGHT LLP

15
16 By: 

Sarah A. Marsey
Alex Hadduck

17
18 Attorneys for Plaintiff
19 ARTHUR J. GALLAGHER & CO.

20
21 Dated: July 9, 2021

MORGAN, LEWIS & BOCKIUS LLP

22
23 By: /s/ Robert A. Lewis

Robert A. Lewis
Debra L. Fischer
Seth M. Gerber

24
25 Attorneys for Defendants
26 TARANTINO, HEATER, MACHETTE, and BRUSH
27
28

1 PURSUANT TO STIPULATION, IT IS SO ORDERED.

2
3 DATED: _____

Edward M. Chen
United States District Judge

4
5
6 **ECF ATTESTATION**

7 I, Sarah A. Marsey, am the ECF User whose ID and password are being used to file the following:
8 **STIPULATED PROTECTIVE ORDER.** In compliance with Civil L.R. 5-1(i)(3), I hereby attest
9 that Robert A. Lewis concurs in this filing.

10 Dated: July 9, 2021

HOLLAND & KNIGHT LLP

11
12 By: _____


Sarah A. Marsey
Alex Hadduck

13
14 Attorneys for Plaintiff
15 ARTHUR J. GALLAGHER & CO.
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of _____ **[insert formal name of the case and the number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]